

)	
FIBER TECHNOLOGIES NETWORKS, L.L.C.)	
140 Allens Creek Road)	
Rochester, NY 14618)	
)	
Complainant,)	
)	
v.)	D.T.E. 01-70
)	
TOWN OF SHREWSBURY ELECTRIC)	
LIGHT PLANT)	
100 Maple Avenue)	
Shrewsbury, MA 01545-5398)	
)	
Respondents.)	
)	

The (Second) Motion of Shrewsbury’s Electric Light Plant to Compel Responses to Information Requests and to Postpone Evidentiary Hearings Pending Resolution of Discovery Disputes raises identical issues to those in its first motion to compel. The documents it seeks are the same customer leases and other customer records at issue in the first motion, and Fibertech incorporates by reference its arguments in response to that motion.¹

¹ See *Opposition of Fiber Technologies Networks, L.L.C. to Motion of Shrewsbury's Electric Light Plant to Compel Responses to Information Requests* (filed Nov. 28, 2001).

² See (Second) Motion of Shrewsbury's Electric Light Plant to Compel Responses to Information Requests and to Postpone Evidentiary Hearings Pending Resolution of Discovery Disputes at p. 7 (filed Nov. 28, 2001).

that agreements with these customers are at “the heart of this dispute.”³ SELP never fills in the logical steps to connect its conclusion to its premise.

SELP’s argument that what is “discoverable” is somehow broader than what is relevant⁴ ignores that, under the Department’s rules, discovery is intended “to provide access to all *relevant* information.” 220 C.M.R. 1.06(c). Massachusetts law on relevance is embodied in Proposed Massachusetts Rule of Evidence 401, which defines relevant evidence as “evidence having any tendency to make the existence of the determination of the action more or less probable than it would be without the evidence.” *See Liacos, Brodin & Avery, Handbook of Massachusetts Evidence* § 4.1.1 at p. 108 (1999) (quoting *Commonwealth v. Fayerweather*, 406 Mass. 78, 83 (1989) (relevant evidence has a “rational tendency to prove an issue in the case”)). SELP has yet to show what fact of any consequence to the determination of this case it hopes to find in Fibertech’s customer agreements.

While Fibertech has the burden to make out the prima facie case in support of its Complaint, the burden is on the party seeking to compel to show the relevance of the information it seeks. SELP has failed to do so, and accordingly both its motions to compel must be denied.

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³ *Id.* at p. 2.

⁴ *Id.* at p. 6.

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